IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Criminal Appeal No. 80-DBA of 1998

Date of decision: November 12, 2007

State of Haryana ... Appellant

Versus

Virsa Singh ... Respondent

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CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL

HON'BLE MR. JUSTICE HARBANS LAL

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Present: Mr. S.S.Randhawa, Addl. Advocate General, Haryana for the appellant.

Mr. K.S.Dhaliwal, Advocate for the respondents.

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HARBANS LAL, J

This appeal has been directed against the judgment dated 17.7.1997 rendered by the Court of Additional Sessions Judge, Jind, whereby he acquitted Virsa Singh, Lakhbir Singh, Sher Singh and Ramesh alias Maheshi, of the charge under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act').

To shorn off all unnecessary details, the prosecution version may be projected thus : On the intervening night of 20/21.8.1994, a Police Party headed by Jasrath Singh, SI, the then S.H.O. of Police Station Garhi, happened to be present at T-point of roads leading to Hans-dehar and Titoli from Data Singh Wala in connection with patrolling and checking of vehicles. One Bawa Singh, Sarpanch of Village Data Singh Wala was also

present with him. Another Police Party organized by Ram Kishan, ASI also came there on a motor-cycle. Ram Kishan, ASI informed the above mentioned Sub-Inspector that he had received a secret information that a truck bearing registration no. PUX-8825 loaded with the bags of poppy husk and vegetables was approaching from Narwana side. Accused-Sher Singh was driving the truck and accused Ramesh alias Maheshi was sitting by his side. A Maruti Van bearing registration no. HR-8/3251 was moving ahead of the truck to avoid the checking of the latter by the Police Party. He also informed that both these vehicles will go towards Daben-kheri. The Sub-Inspector, treating this information to be reliable, formed a raiding party and set up a picket at that place to stop and check the vehicles referred to above. Meanwhile, the Maruti Van came there which was made to stop. Accused-Lakhbir Singh was driving the Maruti Van. In the meantime, the above mentioned truck also came there. The same was also made to stop. Two young boys jumped out of the truck and ran towards the fields though Virsa Singh accused was captured at the spot. On interrogation, he disclosed the identity of those two escapists to be Sher Singh and Ramesh. The aforementioned Sub-Inspector served notice, Exhibit PG to accused Virsa Singh and informed him that he has suspicion that there was poppy husk or some other contraband in the truck. He told Virsa Singh that he wants to take search of the truck and if he was reluctant to offer the truck for search by him, he could opt to give his search in the presence of a Gazetted Officer or any Magistrate. In his reply,Exhibit PH, he offered to get his truck searched in the presence of a Gazetted Officer. The Sub-Inspector sent message to S.P.Jind, who directed Shri H.K.Kalsi, the then D.S.P, Safidon to reach at the place of recovery. On receipt of such message, the D.S.P

reached there.

On search of the truck, 40 bags each containing 48 kgs.of poppy husk were recovered from beneath the vegetables. 250 grams of poppy husk was drawn from each bag as sample. Each bag and sample were sealed separately with the seal bearing letters JS of the Investigating Officer and HK of the D.S.P. The specimen seal impressions of both the seals were retained. Thereafter the Maruti Van and the truck along with 40 bags containing poppy husk were seized vide Memo. Exhs. PA and PD respectively attested by H.K.Kalsan, D.S.P, Bawa Singh Sarpanch and Ram Kishan, ASI. Ruqa, Exh. PA was sent to the Police Station, Garhi, where on its basis, formal FIR, Exh. PC was registered. A rough site-plan, Exh. PK showing the place of recovery was prepared. On return to the Police Station, the case property was deposited with MHC Phool Kumar; Vide report, Exh. PL, the Chemical Examiner gave the opinion that all the samples were of poppy straw. After completion of investigation, the charge sheet was laid for trial of the accused.

The accused were charged under Section 15 of the Act, to which they did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution examined as many as 8 witnesses and closed its evidence after tendering the above mentioned Chemical Examiner's report. On close of the prosecution evidence, the accused were examined under Section 313, Cr. P. C. They denied the allegations appearing in the prosecution evidence and offered to adduce defence evidence, but without leading any evidence, they closed their defence.

After hearing the Additional Public Prosecutor as well as the

learned defence counsel, the accused were acquitted of the charge, as noticed at the outset, by the Court of learned Additional Sessions Judge, Jind. Feeling aggrieved therewith, the State of Haryana moved Criminal Misc. No. 37-MA of 1998 for grant of leave to appeal against the judgment of acquittal dated 17.7.1997. Vide order dated 18.2.1998, leave to appeal regarding Virsa Singh only was granted.

Mr. S.S.Randhawa, learned Additional Advocate General, Haryana, valiantly urged before us that the trial Court has gravely erred in acquitting the accused especially when there is huge recovery of 40 bags of poppy husk, each containing 48 kgs., which by no stretch of imagination, can be planted. He further pressed into service that as is borne out from the prosecution evidence, the provisions of Sections 50, 55 and 57 of the Act were complied with by the Investigating Officer. He further canvassed at the bar that the Investigating Officer had informed the Superintendent of Police, Jind to depute a Gazetted Officer at the spot enabling him to carry out search of the accused as well as truck bearing registration no. PUX-8825 and the latter gave a direction to D.S.P., Safidon to reach the spot so that the Investigating Officer may take search of the accused as well as the truck in his presence. He further puts that on receipt of such direction, the aforesaid D.S.P., a most superior officer of the Police Department of District Jind visited the spot and the search was carried out in his presence and he affixed his seal on the case property as well as the samples and thus, it does not lie in the mouth of the accused to contend that the mandatory provisions of the Act were not adhered to.

To overcome these submissions, Mr. K. S. Dhaliwal, learned counsel representing Virsa Singh accused-respondent, agitated at the bar

that as emanates from the judgment appealed against, the prosecution version is bristle with such infirmities which deals a coup-de-grace to its edifice. He further submitted that the impugned judgment is based on a very solid reasoning which call for no interference in appeal.

After giving a deep and thoughtful consideration to the rival contentions, the view we are inclined to take is that the contentions put forth by Mr. S.S.Randhawa, learned Additional Advocate General, Haryana, are unsustainable and untenable, for the discussion to follow hereunder.

At the cost of recapitulation of facts, it deserves to be pointed out here that according to the prosecution story, 40 bags of poppy husk were recovered from the truck. As per the testimony of Ram Kishan, ASI, PW-7, he had seen only Exhs. P1 to Ex.P33 or in other words, only 33 bags out of which 31 bags were in good condition whereas the remaining two were in torn condition were produced as case property in the trial Court. In identical terms, is the statement of PW-8, Jasrath Singh, the then SI/SHO, Police Station, Garhi. The prosecution has not furnished any satisfactory explanation as to under what circumstances, the remaining 7 bags said to contain poppy husk forming part and parcel of the case property, could not be produced. A frivolous explanation proffered by the prosecution is that as per contents of Exh. PM, copy of DDR No.22 dated 29.2.1996, 10 bags of poppy husk out of the case property of this case were damaged in the flood. The reasonable interpretation which can be put on the language of this D.D.R is that 10 bags of poppy husk got damaged in the flood. If 10 bags got damaged in the alleged manner, and 33 bags were produced in the Court as case property, then the figure swells to 43 bags, which is not the prosecution case. This gives an inkling that either 10 bags were not

damaged in the flood or 3 have been added in the case property so as to produce 33 bags in the Court. If the room in which the case property was stored, was flooded with water, in that eventuality, all the bags would have been got damaged. If the case property of this case was partly damaged, the case properties of some other cases might have also got damaged in the Malkhana. If the case properties of other cases had got damaged, the DDRs in this regard might have also been entered in the Roznamcha. The copies thereof might have been placed on the record. The above flaw palpably cuts down the fibres of the prosecution fabric.

The sum and substance of the deposition of Hemant Kumar, PW is that after his arrival at the place of recovery, he got arranged a big weighing scale and got the weights of the gunny bags done. In his cross-examination, he went on to say that "as soon as I left my residence along with my gunman and driver and with some other constables, the gypsy suffered a mechanical defect, therefore, we all took a lift in a private gypsy, white in colour, from Safidon to the place of recovery." In his next breath,he regretted his inability to disclose the registration number of the gypsy. It imports that this witness reached the place of recovery in a private gypsy. If it was so, the driver of such gypsy who was a private person, might have been the best witness to depose about the recovery. As follows from the record, he has neither been cited nor examined as a witness for the reasons best known to the prosecution. It has surfaced in the further cross-examination of this witness that an entry in respect of the mechanical defect of the gypsy was made in the log book at Serial No. 18 of 21.8.1994 but that entry was not in specific words that the gypsy suffered a mechanical defect. Strangely enough, the requisite words have not been recorded in the alleged

entry in the log book. This too cast a speck of doubt on histestimony. Seemingly, this story has been coined.

As emerges out of the evidence of Jasrath Singh (sic), grounds of arrest were not supplied by him to the accused Virsa Singh or Lakhbir Singh. It implies that he did not comply with the relevant provisions of the Act.

As would be apparent from the deposition of Phool Kumar, PW-3, as also his affidavit,Exh. PD, samples were despatched on 7.9.1994 to the Director,Forensic Science Laboratory, Madhuban through Hans Raj, PW-4, who has also lent sustenance to this version vide his affidavit,Exh. PE. It is worth pointing out here that the alleged recovery is stated to have taken place on the intervening night of 20th/21st of August, 1994. It means that the samples were despatched after sixteen days whereas the same were required to be despatched at the earliest possible so as to rule out the possibility of their being tampered with. The prosecution has not assigned any cogent reason for withholding despatch of samples for such a long time.

As transpires from the solemn affirmations made by Ram Kishan,ASI as well as Jasrath Singh, PWs, no intimation regarding the arrest of the accused persons or recovery of poppy husk was sent to the superior police officers immediately. Section 57 of the Act lays down that "whenever any person makes any arrest or seizure under this Act, he shall, within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior." Thus, obviously, the Investigator acted in derogation of the provisions of Section 57 ibid by not submitting a full report in the stated terms to the immediate official superior within the period as contemplated by the Act.

Still worse, Jasrath Singh, PW-8 has stated in no uncertain terms that Virsa Singh (accused) submitted his reply, Exh PH to the effect that his search should be conducted in the presence of a Gazetted Officer and that then he (Jasrath Singh) sent V.T. to S.P.Jind from his gypsy and that since D.S.P, Narwana was not available being on leave, he directed his Police Station to contact S.P.Jind on V.T and the Police Station contacted the S.S.P and that at about 4.30 P.M., Hemant Kumar Kalsan, the then D.S.P., Safidon reached the place of recovery. Ostensibly, the accused Virsa Singh had opted to be searched in the presence of a Gazetted Officer. There is nothing on the record to show that he was ready to get his person searched from the aforementioned D.S.P. As per the mandates of Section 50 of the Act," if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the Departments mentioned in Section 42 or to the nearest Magistrate. Jasrath Singh (sic.) has not given any reason for calling a Police Officer for the purpose of carrying out the personal search of the accused. In re: **Jasbir Singh @ Shaka** versus **State of Punjab,** 1996 (3) Recent Criminal Reports 55, on 21.3.1992, HC Hukam Chand was posted in Police Station, Ding and on the date, he was present at Ding Mor along with SI/SHO Amrik Singh. A truck bearing No. GJ-08T-4040 came from the side of Fatehabad. The same was intercepted by the Police Party headed by SI/SHO Amrik Singh. There were two occupants in the said truck. Suspecting some narcotic substance in the truck, SI Amrik Singh called the DSP by sending a wireless message and Yogender Nehra, DSP arrived there at about 7.30 P.M. In the presence of the DSP, 160 bags of poppy straw were recovered. A Division Bench of this High Court was pleased to observe that " in view of the factual position

that the mandatory provisions of Section 50 of the N.D.P.S Act have not been complied with by the prosecution, the conviction of the appellant under Section 15 of the N.D.P.S Act cannot be sustained." To our mind, the facts of the case at hand bear semblance with **Jasbir Singh @ Shaka's** case (supra).

Section 42 (2) of the Act lays down that " where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the Proviso thereto, he shall, within seventy-two hours send a copy thereof to his immediate official superior." Here in this case, the alleged recovery was effected between sun-set and sun-rise. The record does not speak that the grounds for belief with regard to the fact that the gunny bags lying in the truck did contain poppy straw were taken down in writing or a copy of the same was sent to the immediate official superior within the aforementioned statutory period. Thus, the compliance of provisions of Section 42(2) ibid has also been thrown to the wind. The alleged recovery was effected as far back as in the month of August, 1994. The period exceeding 13 years has gone by.

The lacunae, enumerated above, go a long way in proving that the impugned judgment does not suffer from any infirmity or illegality, as would require interference therein. Sequelly, the appeal being bereft of any merit, is dismissed.

(HARBANS LAL)
JUDGE

(MEHTAB S. GILL)
JUDGE

November 12, 2007
RS